

## United States District Court

Eastern District of Michigan

United States of America

**ORDER OF DETENTION PENDING TRIAL**

V.

GARY TOLBERT

Defendant /

Case Number: 07-30206

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

**Part I – Findings of Fact**

“ (1) I find that:

- “ there is probable cause to believe that the defendant has committed an offense
- “ for which a maximum term of imprisonment of ten years or more is prescribed in 21 U.S.C. § 841 or 846;
- “ under 18 U.S.C. § 924(c).

“ (2) I further find that the defendant has not rebutted the presumption established by finding that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

**Alternative Findings**

**T** I find that the government has established by a preponderance of the evidence that there is a serious risk that the defendant will not appear. - Repeatedly failed to comply with terms of probation.

**T** I find that the government has established by clear and convincing evidence that there is a serious risk that the defendant will endanger the safety of another person or the community. - Multiple convictions for assaultive crimes, several involving dangerous weapons. Numerous domestic violence cases.

**Part II – Written Statement of Reasons for Detention**

**T** I find that the credible testimony and information submitted at the hearing established the following factors under 18 U.S.C. § 3142(g):

- T** (a) nature of the offense - Intimidation of a government witness in a federal criminal proceeding.
- T** (b) weight of the evidence - I view the evidence as strong; defendant personally made intimidating statements to both the victim and the victim's aunt.
- T** (c) history and characteristics of the defendant -
  - T** 1) physical and mental condition - Long history of drug abuse continuing to the present.
  - T** 2) employment, financial, family ties - Has family ties, but no assets and minimal employment.
  - T** 3) criminal history and record of appearance - Two drug convictions; one felony and one misdemeanor.

Three failure to appear warrants outstanding for drug, larceny and traffic offense since 2000.

- “ (d) probation, parole or bond at time of the alleged offense -

- “ (e) danger to another person or community -

This defendant is charged with threatening physical harm to a witness in a federal case against the defendant's nephew. The evidence also indicates that he threatened harm to the witness' family because they spoke with government agents. The threatened harm to the family was the bombing of their home, which is across the street from the defendant's residence. Although defendant's nephew has pleaded guilty, the witness continues to fear retaliation from defendant. In view of his drug history, his criminal history and the lack of financial contacts, I view defendant as a flight risk. He has three outstanding warrants for failure to appear in other courts. Defendant's drug history and criminal record also causes me concern that he will attempt to retaliate against the witness/victim. It should be noted that her willingness to testify was a major reason for the guilty pleas by defendant's nephew. Since the witness' aunt has reported a separate threat, and is likely to be a trial witness against this defendant, I view the separate threat against the family home as evidence that the defendant is a danger to the community. Pretrial Services recommends an unsecured bond. I disagree with the recommendation.

**Part III – Directions Regarding Detention**

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

s/Donald A. Scheer*Signature of Judge*Donald A. Scheer, United States Magistrate Judge*Name and Title of Judge*

Date: April 17, 2007